

Essex Compact

Annexe: Some Explanations and Examples

This annexe is meant to help explain some of the more complex issues covered in the Essex Compact or its codes of practice. It does not have the force of an agreement binding on the signatories and should not be used on its own as the basis for a complaint of Compact non-compliance, but only to help clarify some issues of meaning and practical application. The examples given are not intended to be exhaustive or to suggest that a similar situation must always be dealt with in a certain way.

We have organised the annexe in line with the documents it seeks to clarify, but in some cases an issue will be relevant across more than one code.

THE CORE TEXT AND GENERAL OR COMMON ISSUES

The Three Tiers of Compacts

We have said in the Core Text that the district compacts should be consulted for things that relate only to those districts, the Essex Compact for issues wider than that within Essex, and the National Compact for issues wider than Essex. Essex here means “political Essex”, the area covered by the County Council, and not Southend or Thurrock.

We also said that we recognised no hierarchy between the three – that the National Compact, for example, was not more authoritative than the Essex Compact and the Essex Compact could not overrule something in a district compact if the issue was restricted to that district. We see this as important: otherwise, local decisions in the light of local circumstances would count for little if they differed from decisions taken at a less local level.

In most cases it will be clear which level is appropriate. A dispute between a Harlow voluntary organisation and Harlow Council over a grant, for example, would be covered by the Harlow Compact. If there is a suggestion that Essex County Council has not complied with the Compact in a consultation exercise, it is the Essex Compact people should consult. If an Essex voluntary organisation feels aggrieved at the way rules are being interpreted across the country by a national government agency such as the Criminal Records Bureau, it should refer to the National Compact.

However, as with most sets of categories, there are grey areas. Because some Essex organisations (such as Essex Police) cover a wider area than the County Council, their consultations, publicity and support for VCS organisations will commonly include some districts not covered by the Essex Compact. Provided the agency concerned (in this example Essex Police) was signed up to the Essex

Compact, though, it might be more convenient for a dissatisfied organisation in “political Essex” to use the Essex Compact rather than the National Compact, and for Essex Police to make sure they were observing the terms of the Essex, Southend and Thurrock Compacts when consulting across their whole area. This is extremely unlikely to lead to any actual conflicts between the requirements of the different compacts, though some will be more specific on certain points than others.

It is also increasingly common for partnerships to be formed across Essex districts but not across the whole of Essex. The default position for such partnerships would be to refer to the Essex Compact, but they might agree to refer to one of the district compacts or to comply with all of them. It would be wise for this issue to be settled at the start of the partnership’s work.

Some statutory agencies like Primary Care Trusts (and some voluntary organisations) cover areas wider than one district but smaller than the whole county. It would generally be wise for them to check they were complying with both the relevant district compacts (to which they would presumably be signatories) and the Essex Compact. An issue about the relationship of such a body with an organisation restricted to one district should normally be dealt with under the terms of the district compact; but if, for example, organisations in both Colchester and Tendring wished to query some action across North East Essex by the local PCT, the Essex Compact would be relevant.

The County Council and some other Essex-wide agencies are often involved in local projects and partnerships. If a project is intended to benefit Braintree alone, for example, and involves a number of Braintree organisations, the involvement of the County Council and of money contributed by the County Council should not prevent any disputes being dealt with under the terms of the Braintree Compact.

If a local Compact is totally silent on a subject, for example on the time that should normally be given for responses to consultations, interested parties may reasonably refer to the next most local Compact (the Essex Compact if the local Compact is a district one) for guidance.

The Role of a Compact Champion

Once an organisation, statutory or Third Sector, has signed up to the Essex Compact, it has committed itself to implementing the Compact in its own activities and to appointing a Compact Champion or champions. How it ensures compact compliance is up to it: this may well involve internal mechanisms and making sure things like induction of new staff and the website if any cover the Compact. The role of Compact Champions is to try to make sure the Compact is complied with by the organisation, is understood within it and has a high profile. It also includes communicating with the Compact Steering Group and Forum (or

other Essex Compact bodies across organisational boundaries), reporting difficulties and good news stories and generally sharing information.

A small organisation will probably have just one Compact Champion, perhaps with a reserve. A large statutory organisation, though, should have champions for each major division of the organisation (directorates, departments or whatever) and some mechanism for these champions to communicate with one another. A national or regional organisation with an Essex branch should appoint a champion at the Essex branch who relates to the Essex Compact and any relevant district compact.

The Compact Champion must **not** have management responsibility for all Compact issues: it is the responsibility of the chief officer and ruling board or council of the organisation to ensure compact compliance, and of the manager in charge of training (for example) to make sure the Compact is covered in training. The Compact Champion(s) are there to encourage, press and inform. The senior manager responsible and the Compact Champion should not be the same person, but the Compact Champion must have access to the most senior officer of the organisation or unit (s)he covers.

The Role of Infrastructure Groups

Voluntary sector infrastructure groups exist to provide common services for other voluntary sector organisations, generally including taking on a championing and representing role for the sector or their part of it and spreading information up, down and across. Some such organisations (like Councils for Voluntary Service) potentially cover the whole local sector, while others (like a Racial Equality Council) cover a distinct part of it. This is a key role for the Compact, especially in public engagement. Some VCS commitments on public engagement apply to this kind of organisation and not to all VCS organisations.

Data Protection

Naturally anything in any Compact must be interpreted in accordance with the law and this includes the Data Protection Act. However, difficulties with meeting Compact commitments within the Data Protection Act should not occur if the organisation holding the data has anticipated being asked to share such information (such as mailing details of member organisations) and has specified this in its submission to the Information Commissioner's Office (ICO). Any questions about such issues can be answered by contacting 08456 306060 or 01645 545745 or checking the website <https://www.ico.gov.uk>.

THE VOLUNTEERING CODE

Equal Access to Volunteering

The Compact commits voluntary and community organisations to provide equal access to volunteering and to work to overcome barriers that prevent some people from volunteering. To some extent this represents what is already a legal

responsibility: volunteering is covered by the employment provisions of equality legislation, and organising things in such a way that some groups (such as men because the only toilet is women only, or, for example, Jews because all volunteers must be available on Saturdays) may well be illegal unless the restriction is unavoidable (for example, if the volunteering is purely in support of football matches that are held on Saturdays).

However, the Compact goes beyond the law and requires all organisations to look at whether they are creating any unnecessary barriers – and not just to the groups of people currently covered by equality legislation. These barriers might be to do with timing of events, or wheelchair accessibility, or childcare arrangements, or indeed whether someone different from the main body of the well-established volunteers (someone young, Black, blind, posh-voiced or whatever) might feel cold-shouldered.

The starting point is to ask yourself what kind of people currently volunteer. There may be some very good reasons for some marked biases: for example, it is common to find that a very high proportion of those who volunteer to help older people are retirement-age themselves, and a village with many long-distance commuters may not recruit many of those commuters for local activities because they come home late and tired. However, there may be other characteristics of your volunteer base that are not so easily explained. Do you get nobody from a certain nearby estate, or no young people for a project you think might interest them? In that case, it is worth trying to find out why, and there is no substitute for asking the people concerned! However, there are some organisations well-placed to advise on particular groups, for example Age Concern for older people, Essex Racial Equality Council for minority ethnic groups and the local university Students Union for university students. The answer may be very simple – for example, that they were not aware of your group, or the time or place of meetings is awkward, or there may be a perception that this activity and group is not for them. The next step, obviously, is to consider whether there is any action you can take to attract them. Sometimes initial approaches fail, but if you keep plugging on, an invisible barrier breaks and people respond; but any efforts you make obviously need to be informed by commonsense, the likelihood of the group in question responding and the numbers involved.

Often drawing in new and different people proves very popular with the old-timers!

THE FUNDING AND PROCUREMENT CODE

To Bid or not to Bid?

Before committing yourself to promising to provide a service (whether through bidding for a contract, or through any other process) it makes sense to consider coolly a number of commonsense factors of which these are a few:

- What will it really cost you to provide the service? If you do not think you will get enough funding to cover the total costs, there could still be reasons why you decide to go ahead, but you should do so with your eyes open and your board or committee fully informed.
- What effect will providing the service have on the rest of your work and the character of your organisation? It might be you can do a good job and not lose financially, but taking on a large new service might so slow the nature of your organisation that other valuable work suffered. Maybe this is avoidable, but action to avoid that needs to be planned at the start.
- Are you really up to the job? Do not undervalue your organisation and thereby miss opportunities – but do be honest about its weaknesses.
- Who else could help you? It makes sense to establish the links early – and may impress the prospective funders!

Grants, procurement and contracts

A grant is money provided, usually by a statutory organisation to a voluntary one, on the understanding that it will be used for purposes that help meet the funding organisation's aims. It may be subject to only very general or standard conditions – such as that annual audited accounts are provided and that the money is spent in line with the funded organisation's stated aims and objectives – or it may be tied to a particular activity, such as the organising of a fair or the purchase of wheelchairs; or it may be quite wide in scope but subject to a number of specific conditions.

Nowadays most large grants fall into the latter category, are controlled according to clearly identified criteria and may be subject to an agreement known as a Service Level Agreement (SLA) which may specify things like target outputs and service quality measures. Although any agreement over a grant is, in law, a contract, it would be very unusual for a funder to seek to claw back money for unsatisfactory performance, though it might well do just that if the grant was for a specific action which did not happen at all. However, grants have traditionally been annual, and poor performance in the eyes of the funder could be expected to lead to the grant being reduced or not renewed at all.

Procurement is the process of an organisation identifying a need, developing proposals for a way of meeting that need, advertising (or otherwise reaching out to potential providers), selecting a provider or providers of a service to meet the need and managing the delivery of the service. This basic definition applies whether the need is for 100 heavy duty staplers or countywide debt advice services, but the actual process will be very different. Procurement does not exclude a potential provider influencing the definition of the need and the method of meeting it: indeed, a VCS organisation may well lobby a statutory organisation to recognise a need and then, whether through competitive bidding or not, emerge as the provider of the service. Procurers do sometimes conclude that only one possible deliverer of the service they envisage exists, and not go through open advertisement: this is still procurement. Increasingly the more

expensive services provided by the Third Sector and funded by statutory organisations are being procured. The contract will specify the nature and standard of service to be provided, and failure to meet those conditions may well lead to the funder seeking to claw the money back.

In general a procured service will be subject to more numerous and specific conditions than a grant, but this is not always so. It is also worth remembering that whereas vague or unspecific grant conditions can easily lead to unlimited interventions by the funder in the affairs of the funded organisation, a procurement contract says what it says and no more. If you are delivering the service to the required standard, according to the terms of the contract and the law, the funder has no grounds for investigating or criticising any other matter it may be uneasy about.

The word “contract” is generally used to describe a procurement agreement, but in law any agreement between two or more parties for one to do something in return for something else is a contract and is legally enforceable.

Market analysis

Market analysis consists of studying the available options for meeting a need, including both potential options and ones already developed. This may, for example, include looking at what organisations in an area would be capable of, and interested in, providing a service. If the answer in terms of the service as originally envisaged was “none”, then it might include examining what sort of service would meet the need and would be deliverable by existing organisations, or what actions might create new organisations or assist existing ones to meet the need. Consequently it might include analysis of locally-available skills and physical resources: if it turned out that there were plenty of people who had the necessary skills but they were not organised, the likely action would be different from if there was a lack of the skills, but plenty of people wanting to learn them.

Full cost recovery

Full cost recovery (FCR) is the idea that an organisation providing a service should recover its full costs – not just the direct, financial costs, but proportions of overheads such as the proportion of the office rent or the chief officer’s pay that could reasonably be attributed to the project (so if the chief officer will have to spend 10% of her time on the project, 10% of her pay and other work benefits would be included. There are various methods of calculating FCR, including computer programmes.

There are several qualifications that need to be made about this. First, it is quite common in the commercial field for a business to happily engage in a “loss leader”, to knowingly lose money on an activity for long-term commercial gain (to squeeze out a rival, for example, or to gain useful experience of a new field, to get known as a provider of that type of service, to gain credibility with the procurer of the service with a view to future business or to demonstrate to a

sceptical funder the potential of the service. Some of these motivations, especially the last, may sometimes apply to Third Sector organisations.

Secondly, the concept is more easily and strictly applied where there is not competitive bidding. In the absence of such bidding, the potentially funded organisation should not (unless it has special reasons as above) propose a cost below FCR and the funder should not seek to impose an agreement below FCR. In a competitive bidding environment, FCR can still act as a useful guideline to voluntary sector bidders so that they do not bid too low out of a commitment to the service.

Thirdly, funders are entitled to take into consideration grant-aid funding they already give for a similar purpose. If, for example, a local council funds the whole salary of a VCS chief executive with the expectation that the VCS organisation will engage in various beneficial projects, it may balk at 20% of that salary being included in a bid from that organisation for funding for a project or in a bid for a contract. This might result in the council approving the bid and cutting the grant, which might not be good for the VCS organisation in the long run.

Assessing risk

Assessing risk is something anyone should do before entering into an agreement or committing resources to a project. To a large extent it is commonsense: it is what any sensible employed person does when applying for a new job. What chance is there that he will struggle in the new role? Could any of the conditions of the new work, such as a longer commute, have serious knock-on effects? What might go wrong with the employer organisation, and how likely is this? This example makes obvious that risk assessment should be combined with benefit assessment, of the opportunities for promotion, learning new skills, feeling more fulfilled and so on, and that in turn should include a risk assessment of doing nothing (for example, that the current employer might abolish his post or that he might be perceived as having been stuck in the same role too long). Clearly a Third Sector organisation considering entering into any sort of contract should consider these things carefully, both before making the first steps and at the sign-up-or-shut-up stage when the terms are clear and a definite commitment is sought.

Risk allocation is a key issue in any contract. Is a Third Sector partner being asked to shoulder all the risk – for example, of new legislation which might increase the costs of delivering the project? Try to make reasonable allowance for predictable risks in any bid or project plan (for example, do not assume that a supplier who has always been reliable will not let you down this time, making you incur costs) and if there are major uncertainties on the horizon such as the possible withdrawal of a free service you are calculating on using, consider if some formula can be agreed for reflecting this in the contract.

Length of contracts or grants

There are many good reasons why a grant may be awarded for a short period such as a year – for example as an experiment, or to plug a short-term gap in the finances of a valuable organisation or because the money is a windfall the grant-giver will not receive again. It may also be that the grant-giver has serious doubts about the receiving organisation's performance in previous years, has discussed this with the receiving organisation, has agreed a course of action with it and wants to see if this actually works. However, if grant is agreed for less than three years, the grant-giver should have a clear explanation of why this has been done, since insecure funding and the need to take up time with annual applications for money are among the main factors weakening the VCS and losing it staff. The fact that statutory authorities have annual budgeting processes in no way prevents them making commitments for more than one year: after all, they often commit very large sums to commercial contracts over several years.

Decisions about whether to commit funding for three years or some longer period should take into account commonsense factors such as the likelihood of the need for the service changing, the amount of money involved, the confidence that the money will be well spent and the need of the receiving organisation to plan well ahead.

Contracts for time-limited projects will correspond to the time the job is expected to take, but where a contract is for continuing services such as long-term services for vulnerable people or maintenance of a nature reserve, it should normally be for three or more years.

THE PUBLIC ENGAGEMENT CODE

Timescales and prioritisation in consultation

It is difficult to set hard and fast rules about times given for consultation and the need to respond. In line with the National Compact, this Code says twelve weeks should be given for responses to consultation where possible. Organisations asking for responses should not include in the twelve weeks the Christmas to New Year period as few organisations can take action then, and should consider carefully whether any consultation for which the period given for responses includes August should be extended. However, there will often be good reasons why twelve weeks cannot be given because of a need for urgency – which may include the Government or some other outside body not having given the statutory organisation twelve weeks for its response. Put simply, the rule should be to give twelve weeks or as near to that as is possible. If the timescale for replies is unavoidably very short, the consulting organisation should not treat a response less seriously because it has come from some relevant individual in the consulted organisation and not gone through the Board or whatever.

There cannot be any absolute duty on organisations consulted to respond, and they are fully justified in pointing out consultation overload. It is the duty of

consulting organisations to find ways of reducing the burden without reducing the influence of the consulted organisations. The decision whether or not to reply will – or at least should – be a matter of prioritising. VCS organisations may justifiably point to the costs of responding, which should be covered in grant-aid and may be covered in a procured contract through factoring in costs of information exchange about the project. An organisation which does not respond to a consultation, but then is publicly critical of the decision reached, is in a weak position. While replying to a twelve-week consultation in the twelfth week is compact compliant, commonsense says it helps the consulting organisation if not all the responses come in at the end in a flood.

Representing the views of others

The commitment in the Code to comments being representative of those whom you purport to represent covers situations such as when a Council for Voluntary Services (CVS) is asked to respond in terms of the views or interests of the local VCS in general, or of the local Voluntary Sector Forum, or where an organisation is asked for the views of its service users or members, and in replying it does not disavow this role. It also applies if the organisation without prompting claims to be speaking on behalf of its members or service users. There may be situations in which an organisation wishes to disassociate itself from a prevalent view of its service users or even members, and this is perfectly possible (for example: “There is a strong view among many of the community groups that the Council has already decided to close the Centre. We do not entirely share this view, but if the decision is dragged out, or there is no sign of efforts to explore alternatives, this view will become accepted wisdom and will reduce interest in further consultation”). If the view that comes up is repugnant (for example, racist) it is better to report the feelings that exist rather than to sweep them under the carpet.

MARGINALISED GROUPS CODE

Who are the marginalised groups?

Black and Minority Ethnic (BME) and disability groups (including those with a mental health or learning disability focus) are specifically covered in this code. Other groups, for example defined by religion or non-religion, small community groups or youth groups, may find the code relevant and quote it in their support.

Taking action to overcome marginalisation

Statutory bodies are obliged by law to produce an equality and diversity plan to cover the whole organisation. VCS organisations can seek advice from specialist equality organisations such as Age Concern, Essex Racial Equality Council, Essex Coalition of Disabled People, Essex Disabled People's Association and Essex Racial Equality Council. Essex Equality and Diversity Network brings together agencies and officers involved in equality and diversity issues to share information and ideas. All these will be happy to help with relevant queries. In addition there are national bodies like the National Association for the Care and

Resettlement of Offenders (NACRO), and pre-eminently the Commission for Equality and Human Rights (CEHR). All these have websites.

This annexe will be revised regularly and additional topics may be added. It should be treated as an aid to using the Compact and not as a part of the Compact with equal authority to the codes and core text.

This document is available on request in alternative formats, including other languages.